

KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | 63RD FLOOR
NEW YORK, NEW YORK 10118
TEL (212) 763-0883 | FAX (212) 564-0883
WWW.KAPLANHECKER.COM

DIRECT DIAL 212.763.0889
DIRECT EMAIL shecker@kaplanhecker.com

August 16, 2021

VIA ECF

Honorable Richard J. Sullivan
United States Circuit Judge for the Second Circuit
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Burgess, et al. (Ramal Curtis)*, 18 Cr. 373 (RJS)

Dear Judge Sullivan:

We represent Ramal Curtis, who is scheduled to be sentenced by Your Honor on August 27, 2021 in the above-captioned matter. Earlier today, we filed a supplemental sentencing submission (the “Sentencing Submission” or “Submission”). The Sentencing Submission describes a prior medical condition of Mr. Curtis and attaches, as Exhibit B to that Submission, a medical record documenting that condition. We respectfully request that Exhibit B to the Sentencing Submission be filed under seal pursuant to *United States v. Amodeo*, 71 F.3d 1044 (2d Cir. 1995), and that references to the medical condition in the Sentencing Submission be redacted. In light of the COVID-19 pandemic and the administrative complications it has caused, we are simultaneously emailing an unredacted copy of the Sentencing Submission and Exhibit B to that Submission to Your Honor’s chambers and copying the United States Attorneys on this case. If Your Honor requests, we will also file the Sentencing Submission by submitting it in person to the Court’s sealed documents depository box at the Daniel Patrick Moynihan Courthouse.

While the Second Circuit recognizes a presumption of open records, that presumption may be overcome based on the “privacy interest of the person resisting disclosure.” *Id.* at 1050. In line with this principle, courts in this Circuit routinely file under seal litigants’ sensitive medical records. *See, e.g., United States v. Daugerdas*, No. 9 Cr. 81, 2020 WL 2097653, at *3, n.2 (S.D.N.Y. May 1, 2020) (defendant’s BOP medical records docketed under seal); *United States v. Estevez*, 18 Cr. 669, 2020 WL 1911207, at *1 (S.D.N.Y. April 20, 2020) (noting that medical records were filed under seal); *Robinson v. Clark*, No. 15 Cv. 8434, 2017 WL 775813, at *10 (S.D.N.Y. Feb. 27, 2017) (filing submission under seal where documents contained “medical information not appropriate for filing on a public docket.”).

KAPLAN HECKER & FINK LLP

Here, the Sentencing Submission and Exhibit B to that Submission contain highly personal, confidential, and sensitive information regarding Mr. Curtis's health and medical history. In line with the case law cited above, we respectfully request that the Court exercise its discretion and permit Exhibit B to be filed under seal and permit any references to Mr. Curtis's prior medical condition in the Sentencing Submission to be redacted.

Respectfully submitted,



Sean Hecker
Meredith Foster
KAPLAN HECKER & FINK LLP
350 Fifth Avenue, 63rd Floor
New York, New York 10118
Telephone: (212) 763-0883
Facsimile: (212) 564-0883
shecker@kaplanhecker.com

Counsel for Ramal Curtis

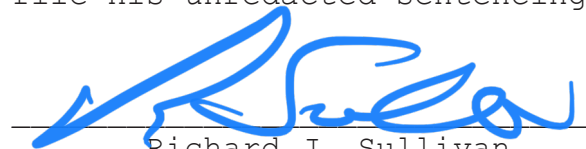
cc: (by ECF)

Assistant United States Attorneys

Because the Court is not persuaded that Defendant's prior positive test for COVID-19 is the kind of sensitive medical information that implicates a privacy interest sufficient to overcome the presumption of open records, *see United States v. Amodeo*, 71 F.3d 1044, 1050-51 (2d Cir. 1995), Defendant's requests to file Exhibit B under seal and to redact references to his being ill with COVID-19 in the sentencing submission are DENIED. Defendant shall file his unredacted sentencing submission on ECF forthwith.

SO ORDERED:

Date: August 24, 2021



Richard J. Sullivan
U.S.C.J., Sitting by Designation